

NOVA SCOTIA'S CHARTER

COLONEL ALEXANDER FRASER

Provincial Archivist for Ontario

THE study of historical origins rarely lacks interest. In so far only as we are able to study the development of a country from its beginning and through the various stages of its growth can we obtain its true and adequate historical perspective. In the Royal Charter granted in 1621 to Sir William Alexander lies the origin of Nova Scotia as a Province and of the name it bears. It is with the conditions leading up to this grant and consequent upon it, as well as with the Charter itself, that the present article is concerned.

At the outset a few words are due to the grantee of the Charter whose name is perpetuated in the three-fold character of statesman, colonizer, and man of letters. Only the other day the first volume of a new edition of Sir William Alexander's poems was issued by the Manchester University Press under the able editorship of Kastner and Charlton. In none of the characters I have mentioned can he be said to have achieved first-rate distinction, but time and circumstances have combined to preserve his name, while his connection with the Province of Nova Scotia is a matter of lasting interest.

William Alexander was born at Menstrie, a small property beautifully situated in the parish of Logie, near the famous Ochil Hills, between four and five miles distant from the historic town of Stirling. The date of his birth is uncertain. It has been placed at 1567, 1580 and —more recently— at 1570. The family was reputed to be of ancient lineage deriving from the Macdonalds of the Isles through the MacAllisters of Loup, Argyllshire. This is doubted by Laing, and in view of the tendency in those times to construct fanciful genealogies the *caveat* may be justifiable; on the other hand, the careful historians of Clan Donald concede the MacAllister descent. A sentimental interest would thus attach to the early connection of Macdonald blood with Nova Scotia now so largely inhabited by descendants of the Highland clans. The Alexanders were of the class known as the smaller barons who held their lands of the great Crown vassals. Their hereditary patrons were the Earls of Argyll. William Alexander, having passed through the grammar school of Stirling, (Thomas Buchanan, a nephew of the celebrated George Buchanan, being then rector), through either St.

Andrews or Glasgow University (for both are mentioned) and through Leyden, travelled abroad in France, Spain and Italy with the young Earl of Argyll—afterwards one of the most powerful nobles in Scotland—who later on introduced him to Court. He was appointed tutor to Prince Henry of Scotland and before long won the personal favour of King James.

Nowhere was the expected death of the eccentric Elizabeth awaited with more interested anxiety than in Scotland within whose ancient royal house lay the succession to the English throne. James, more eccentric and almost equally famous, was feverishly waiting for the news, and when he crossed the Border (in 1603) many of his countrymen were in his train, among them the poet-tutor of Prince Henry.

James's accession touched two great eras in British history. The full-orbed splendour of the Elizabethan age was lingering in the west, and the rosy-fingered dawn of the seventeenth century gleamed above its glorified eastern horizon. The genius of Milton and Shakespeare reigned over the republic of letters; the chivalry of Sidney and Raleigh still touched the imagination of fashionable men and women; Drake, Cavendish, and Gilbert gave zest and ardour to maritime enterprise; the wealth of Ormus and of Ind waited on the galleons of the awakening nations; while the skill of the master-artists in political intrigue was exercised under the influence of the dominant Cecil, and was already taking the form of what was to be a binding tradition. Into this current of affairs, in the vigour of mature manhood, Alexander was drawn, with exceptional opportunities of observing and learning. He learned well. His rise in London was rapid. He became a gentleman extraordinary of Prince Henry's private chamber, then master of the household, and received in 1609 the honour of Knighthood. The Prince died in 1612, and in the year following Alexander became one of the Gentlemen Ushers of the Presence to Prince Charles, afterwards Charles I. In 1614 he was appointed to the difficult and onerous office of Master of Requests, the duties of which brought him into delicate and close relations with not a few of his influential fellow-countrymen. With some of them he made useful friendships which he turned to account when his most promising opportunity arrived. Meanwhile he retained the goodwill of his sovereign who appreciated his literary pursuits, collaborated with him in a metrical version of the psalms of David, and reposed in him an implicit confidence.

The great movement of the time was the plantation of overseas colonies. It began in the reign of Elizabeth, who granted to Sir

Humphrey Gilbert and Sir Walter Raleigh patents of discovery and colonization resulting in the nominal acquisition of North Carolina and Virginia, and the new century was ushered in by Gosnold's eventful voyage. Then came the Virginian Charters and the beginning of the rills that with increasing and accumulating flow marked the expansion of England into the great empire over which floats our own flag to-day. These throbbings of ambition stand to the credit of the great Englanders of the seventeenth century, but it is only fair to state that the first Stuart King of England "wisest fool in Christendom" understood, appreciated and effectively encouraged the commercial and colonizing aspirations of his enterprising subjects, and that without his unflinching interest the great opportunities of the time would probably have been missed. Before the close of 1620 the patent for New England was issued, and the Mayflower Compact extending from the 40th to the 48th degree of north latitude was signed and sealed at "Cape Cod".

Alexander's confidential position at Court enabled him to become familiar with these projects and to form a favourable estimate of them. Consequently when he was consulted by the King as to the removal of the French, who had been dispersed by Captain Argall from Port Royal which was within New England territory—he at once perceived that his chance had come. He conceived the idea of founding a Scottish settlement in the new world. Already there were in existence New Spain, New France, New Holland, New England; why not a New Scotland? "Fertile in device and expert in execution, and of an unswerving tenacity of purpose", as he has been described by Charles Rogers, he lost no time in giving his idea practical effect. In this resolve he was encouraged by Captain John Mason, Governor of Newfoundland, who had acquired a knowledge of conditions in the islands and west coast of Scotland when associated with Bishop Knox in suppressing lawlessness arising from clan feuds in these parts, and by Ferdinando Gorges, Governor of New Plymouth, through whose influence the Charter rights of the New England Company over Acadia were surrendered to permit a re-grant of the lands to Alexander. To these circumstances Nova Scotia owes both its origin and its historical connection with Scotland, which has stood and stands for so much in the spiritual and material welfare of the Province. While Alexander's scheme was designed primarily to further his own fortune, it does not necessarily follow that he was devoid of patriotic motives, or that he was indifferent to the benefits which ought to accrue to his native land from a flourishing overseas colony.

He purposed to provide an outlet for Scottish enterprise for the advantage and the credit of Scotland; hence the name "New Scotland". King James viewed Alexander's application with favour. The king had singular and consistent faith in colonizing as a means of increasing the national prosperity, and in so far as it might provide new industries and new opportunities for labour he believed in its power as a civilizing agency. An interesting event in his Scottish reign in this latter respect was his attempt to restore and maintain law and order in the Hebridean Isles. In the year 1598 he granted the forfeited lands of the Lewis, Harris, Dunvegan and Glenelg to an Association of Lowland gentlemen (known popularly as the "Fife Adventurers"), for the purpose of reducing the turbulent clans to obedience to the laws by furnishing to the people peaceful industrial employment. The methods of carrying the project into effect, rather than the demerit of the conception, may have caused its failure; but the failure of repeated efforts did not weaken James's confidence. The tenacity with which they held to opinions formed in youth by the precept of tutor or by the example of parent was a striking characteristic of the last four Stuart kings. They counted no price too high, no violation of good faith too base if such would promote and establish the principles they conscientiously entertained and in which they believed—whether pertaining to Church or to State. In this, indeed, they were conspicuously true to the Scottish type, whether of the persecuted or of the persecuting class, alternately coercing or resisting as the case for the moment might be.

After his accession to the English crown James found fields in America more promising than those he had essayed in the Hebrides, and therefore in complying with Sir William Alexander's request he had the double satisfaction of gratifying a friend and once more indulging a favourite policy. The application was made direct to the King, who in turn recommended it to the Lord Chancellor and Privy Council of Scotland in terms that left no doubt as to the royal will. The form of the King's letter is in itself an interesting thing. After the formal salutation and greeting, it proceeds in part:—

"Having ever been ready to embrace any good occasion whereby the honour or profit of our Kingdom may be advanced, and considering that no kind of conquest can be more easy and innocent than that which proceeds from plantations, specially in a country commodious for men to live in, yet remaining altogether desert or at least only inhabited by infidels the conversion of whom to the Christian faith (intended by this means) might tend much to the glory of God,—considering how populous our Kingdom (Scotland) is at this present, and the necessity that idle people

should be employed, preventing worse courses—there are many that might be spared, of minds as resolute and of bodies as able to overcome the difficulties that such adventures must at first encounter—the enterprise doth crave the transportation of nothing but only men, women, cattle, and victuals, and not of money, and may give a good return of a new trade at this time when traffic is so much decayed—Therefore we have the more willingly hearkened to Sir William Alexander who has made choice of lands lying between New England and Newfoundland, both the Governors whereof have encouraged him thereunto.”

The grant was to Sir William, his heirs, and assigns, or “to any other that will join with him in the whole or in any part thereof,” to be held of the crown as part of Scotland. The royal warrant was signed by the King at Windsor on the tenth of September, 1621, and was registered on the 29th of that month. The land thus conveyed was of large extent, though of course much smaller than the original grant to New England, of which it formed but a surrendered part. It included:—The lands and islands within the promontory of Cape Sable, westward to the roadstead of St. Mary, crossing its entrance or mouth of that roadstead to the St. Croix River, following to its remotest source from that indefinite place direct north to the St. Lawrence; eastward along the south shore of that river to Cape Gaspé, then south-southeast to the right of Bacalaos Isles, onward to the mouth of the Gulf at the northernmost point of Cape Breton and from there southward to and including Sable Island, and to the starting point of that Cape, or the present day Nova Scotia (including Cape Breton), New Brunswick, part of the State of Maine and part of the Province of Quebec. The Charter provides that the lands so granted:— “Shall in all future time bear the name of New Scotland in America.” *Quaequidem terrae praedictae omni tempore affuturo nomine Novae Scotiae in America gaudebunt.* Let us hope that in all future time Nova Scotia it shall be.

The rights and privileges conferred on Sir William Alexander by the Charter have been, generally speaking, considered as almost unlimited. This, undoubtedly, is true, but if the usages of the time be taken into account the concessions will not appear excessive or exceptionally generous. Settlement and occupation involved great risk, not only to invested capital, but to life itself. Enemies were many; competitors sometimes drew the sword; hostile Indians roamed the forests and canoed the rivers, and white men disputed the occupancy and ownership of the soil. The tenure was precarious and subject to the oft-varying fortunes of war. To settle and govern a province, thus conditioned, was no light task and with-

out a large measure of potential authority would have been impossible. Keeping these things in view, we shall not find the powers invested in Sir William Alexander unreasonably exorbitant, large though they undoubtedly were.

Among the rights conferred were:— all *minerals*, which (except a tenth royalty on gold and silver) were untaxable, the more easily to bear the large expense of operating and of reducing and refining the ores: *forests* without restrictions; the *fisheries* in fresh and salt waters, and pearls; the spoils of the *chase, hunting* etc. Any of these things that might be sold or inherited were granted with full powers, privileges and jurisdiction of free royalty for ever. There were also granted:—the patronage by which clergymen were appointed to churches; the offices of justiciary and admiralty; the authority to establish free ports, markets, and fairs, to regulate fees and trade revenues, to hold courts of justice, to represent the Crown on the coasts and within the bounds as hereditary Lieutenant-Governor of New Scotland.....and in that capacity to erect civil and municipal jurisdictions, to make ordinances for government and for administration of justice in civil and criminal cases. The laws and their interpretation were to be as consistent as possible with those of Scotland. In case of sedition or rebellion the Governor could invoke martial law as might be done by any other Lieutenant of the King in an overseas Dominion. To encourage settlement honours could be bestowed on deserving persons, power was given to enforce the fulfilment of contracts, to make grants of land, to use the necessary means for the protection of life and property, and to carry on overseas trade and commerce, on which after three years exemption the Crown became entitled to an impost of five per cent. Emigrants to New Scotland were required to take the oath of allegiance to the King before embarking; settlers, their children and posterity were entitled to enjoy all the liberties, rights and privileges of free and native subjects of Scotland, or of other English Dominions “as if they had been born there.” The power to regulate and coin money was granted in the interest of a free movement of trade and commerce. These were the main points in the Charter from a business point of view.

Sir William was appointed Lieutenant-General of the Province and this office was made hereditary. A Common Seal, pertaining to the office of Justiciary and Admiralty, was provided for. On one side the Royal Arms were to be engraved with the words on the circle and margin thereof:—*Sigillum Regis Scotiae Angliae Franciae et Hyberniae*, and on the other side the image of the sovereign with the words:—*Pro Novae Scotiae Locum Tenente*.

The Province was incorporated in one entire free barony which was to be called in all future time by the name "New Scotland:"—*In unam integram et liberum dominium et baroniam per praedictum nomen Novae Scotiae omni tempore futuro appellandum.* Provision was made for Sasine, for enfeoffment, for the ratification of the Charter by the Scottish Parliament, and a promise was given of its renewal and enlargement to meet changing conditions.

The quit-rent to the Crown was to be an annual payment of one penny of Scottish money on demand. The nature of this condition has been misapprehended by some writers who in the moiety find evidence of improper alienation of the public domain, overlooking the fact that it was but the nominal superiority fee, neither having nor intended to have any relation to the monetary value or the public policy involved in the transaction, which were based on entirely different considerations. The real and decidedly onerous condition of the tenure was the settlement by Scottish emigrants of the lands so granted in default of which the Charter would lapse. To some of us this principle might appear to be unsound, but it was in accord with the practice on which large business then proceeded, on which indeed the foundations of Empire were laid, and, *mutatis mutandis*, with the practice in our own day except in so far as the principle of public ownership has been applied.

For the purpose of taking possession of lands after the feudal fashion then prevailing, Nova Scotia was made a part of the county of Edinburgh, and at Edinburgh Castle the ceremony of Sasine was performed. That Sir William Alexander appreciated the difficulties involved in taking up his patent is evident from the fact that he had in advance sought the help of useful friends in Scotland. Perhaps nowhere could be found a more desirable class of settlers than among the Scottish borderers—a hardy, healthy race, inured to toil, not unfamiliar with the use of weapons of defence, or offence if need be, and in sufficient numbers to be spared without serious disturbance or loss to existing local industries. His first step therefore, was to enlist the co-operation of his friend, Sir Robert Gordon of Lochinvar, from whose estates in the Stewarty of Kirkcudbright it was expected that emigrants might be drawn. To secure Sir Robert's interest Alexander surrendered the part of his barony comprising Cape Breton, for which a Crown grant was given to Sir Robert Gordon and to his second son, Robert, conjointly, and named in Gordon's Charter, "New Galloway". Association with Scotland was sought to be strengthened by appealing to the national sentiment through the subtle influence of Scottish place-names. The Solway, the Tweed, the Forth, and the Clyde gave their names to New

Scotland Rivers. The "province of Alexandria" was personal, but there could be no mistake as to the national character of the "province of Caledonia" and the "barony of New Galloway". A Presbyterian clergyman and one artizan only joined the party of farm labourers at Kirkcudbright, and the vessel left in June, 1622, less than a year after the date of the Charter. The ship, however, did not leave the Isle of Man, where it had called, until the month of August. The promised land was sighted about the middle of September, but a storm prevented landing and the vessel was driven back to Newfoundland where the passengers wintered. The ship had been meagrely fitted out; money was scarce, and—provisions failing—it was necessary to send back the vessel to England for fresh supplies. The clergyman and the artizan died; the labourers scattered to find employment among the fisheries, and next year, when a ship arrived at St. John with additional settlers, the original party could not be assenbled. Here a party of ten was selected to visit New Scotland and to report on the prospects of settlement. The result was encouraging, and they returned to England. Their report, which was published by Sir William with an appeal for emigrants, now forms a valuable historical pamphlet. These two attempts at colonizing practically ruined Sir William financially, and the estimated loss of £6,000 sterling was made a public charge on the exchequer, but was never discharged. It was in these extreme straits that he bethought himself of the King's expedient in raising £225,000 by the sale of Ulster Baronetcies to two hundred and five English gentlemen. Might not the scheme which succeeded so well in the plantation of the North of Ireland be repeated with comparative success in New Scotland? The Scottish lairds and gentry were a poorer class than the affluent English squires, so the price was proportionately reduced, i. e., from £1,100 to £166 (3,000 marks) each, the money to be applied to settlement expenses exclusively under the personal cheque of the subscriber. We may be shocked at this means of raising money, but *tempora mutantur et nos mutamur in illis*. There was a time in England when chivalry was rewarded by a lady's smile, and when some renowned Knights drew sword for the very practical purpose of making a living, inconsistent enough though these two conditions may seem. There was a time when public honours and dignities were openly appraised and ownership and precedence were striven for, but that was a time before the veil of delicacy was drawn over the entrance to the Privy Council and before a Prime Minister of Canada convinced himself that he as the real fountain of honour possessed the right to serve out its refreshing draughts with the party whip as cup-bearer! Those

who study the records of the past at close range learn, whatever may be generally thought to the contrary, how little of real fundamental change takes place in human nature in the course of long centuries, notwithstanding the change of environment and of manners. No public conscience was shocked by the grants of titles in the reign of James or of his successor at a set price; the money went to support schemes for the public good.

Before the measure became effective James VI. died. Two months later the first baronets of New Scotland were created. They deserve to be mentioned as the first members of a great social order which has left a deep impression, if not directly on Canadian, at least on Scottish life. They were:—Sir Robert Gordon, son of the Earl of Sutherland; The Earl Marischal (Keith); and Alexander Strachan of Thornton. On the day following five names were added to the roll:—Sir Duncan Campbell of Glenorchy, ancestor of the Marquis of Breadalbane; Robert Innes of Innes, ancestor of the Duke of Roxburgh; Sir John Wemyss of Wemyss, ancestor of the Earl of Wemyss; David Livingston of Dunipace; and Sir William Douglas of Glenbervie. No fewer than forty-two peerages are still held by descendants of the original baronets of Nova Scotia; among them are names so distinguished as those of Aberdeen, Rosebery, Reay, Abercorn, Elibank, Scarsdale, (Curzon of Kedleston), Ailsa, Macdonald of Sleat, Cromartie, Caithness, Carnwath, Mar and Kellie, Queensberry, Lauderdale, Seafield and Ochiltree. Forty-five chiefs of clans or heads of clan cadet families received the honour, among them being:—Macdonald, Gordon, Campbell, Murray, Colquhoun, Forbes, MacKay, Stewart, Ogilvie, MacKenzie, Sinclair, MacLean, Munro, Menzies, Ross and Grant. We find too such Border names as Maxwell, Douglas, Hume, Blackader, Stewart of Galloway, Riddell, Agnew and Hannay. All parts of Scotland were represented, and Scottish life and character reflected in the roll of honour. The recipients were not selected favourites; the honour was not *bestowed*, it was besought, and—as we have seen—paid for. The number of titles was limited to one hundred and fifty, and during the period when colonization settlement was still hoped for (1625-1638) one hundred and thirteen titles were granted. Creations continued afterwards in a more or less desultory manner until 1707, the year of the legislative Union of England and Scotland, when they ceased.

The country was divided into two provinces, each province into several dioceses, each diocese into ten baronies, and each barony into six parishes. Each barony was to be six by four miles in extent,

fronting either the sea or a navigable river, and each baronet was to receive a grant of at least sixteen thousand acres. The social precedence of each was to be next to the youngest sons of Viscounts.

The conditions of settlement have been described as prohibitive. Those early days, it is true, were not the days of departmental regulations revised and improved from year to year in the light of experience to meet varying conditions, but the terms offered do not seem to suffer by comparison with those of contemporary settlements. Sir Robert Gordon of Lochinvar for his Cape Breton estate formulated these:—

Landed gentlemen were to hold the soil in fee for ever.

Farmers were to hold their lands by lease.

All were to pay in kind to the Lord proprietor, after a specified time, one thirteenth of the whole income of the land.

Artizans and craftsmen were favoured by having the rents of their lands, probably only house-lots, free during their lives, but to be subject to rent to their successors.

Alexander's intention with respect to the baronetcies was twofold; to make such a geographical distribution of the honours throughout Scotland as would embrace those rural parts in which, because of an excess of population, the major portion of the emigrants ought to be available; and, also, to include members of noble families having considerable landed interests and public prestige. Both these classes, it was believed, would naturally be best fitted to divert either migration or surplus to the new overseas Scottish colony. Moreover, the fact that the title itself was founded on the Charter of New Scotland, and based territorially thereon, was bound to inure to a permanent and friendly interest in that province of which the baronets and their descendants were in effect made hereditary citizens, though not compelled to reside in the country. There was in addition to this, as a bond, the substantial grants of land given with the title. Had the project succeeded, some of the most influential men in Scotland would have had abiding interest in the prosperity of the country that could scarcely be hoped for in any other way.

The baronetcies, however, did not provide the necessary funds, and while Alexander made effort after effort to advance settlement other difficulties arose. Charles was as kindly disposed to Alexander as was James, but his rule brought trouble at home and abroad. The treasury was hard pressed. The public mind was becoming unsettled. Entanglements with France affected colonization adversely, and Acadia passed from one sovereignty to another with a frequent and unfailling recurrence fatal to security of title or invest-

ment. In 1631 Charles requested Sir William Alexander, at the instance of the French Court, to remove all the people from Port Royal and deliver it to the French. This practically meant a breaking up of the colony; for, although Charles maintained that he had not surrendered England's title to the lands of Acadia—a contention not inconsistent with the language of the treaty under which the surrender was made—nevertheless, the King's act brought to an end Alexander's work of actual settlement in Nova Scotia. He became Secretary of State for Scotland and attained to the peerage by the titles of Earl of Stirling and Dovan, but his great enterprise exhausted his resources and in 1640 he died financially involved.

The possibilities of that enterprise were great, and Sir William Alexander showed uncommon vision, for his day, in evolving a scheme which, under capable business or commercial control, might have brought to Nova Scotia prosperity equal to that enjoyed in New England. Instead, we have in his case an example of a poet, a philosopher, an accomplished civil officer with dreams of empire revolving in his mind, going beyond his depth in the sea of practical business life, a promoter with the promoter's unflinching enthusiasm, a gentleman adventurer with the unbending courage of his ancient race, and a choice spirit that hope deferred was unable to break.

His motives in the undertaking were doubtless of a mixed character, but one of the most unbiased writers on the subject agrees that the following summing up by Alexander himself of the advantages offered by American colonization reveals his real sentiments:—

“The greatest encouragement of all for any true Christian is this, that here is a large way for advancing the gospel of Jesus Christ, to whom churches may be builded in places where his name was never known; and if saints in heaven rejoice at the conversion of a sinner, what exceeding joy would it be to them to see many thousands of savage people who do now live like brute beasts, converted unto God, and I wish (leaving these dreams of honour and profit which do intoxicate the brains and impoison the mind with transitory pleasure) that this might be our chief end to begin a new life, serving God more sincerely than before, to whom we may draw near by retiring ourselves further from hence.”

His bequest to Nova Scotia was a significant name,—a name in which there is much,—and a political association from which much has been already derived and from which still more is to follow. When the time was ripe the potency of both asserted itself, for the

old connection was not, and could not be, entirely forgotten. There were those in Scotland who had never accepted the French claims of sovereign or treaty rights in their entirety, and who, with good reason, never forgave the *Carolii* for their ambiguous surrenders. But the time was not yet propitious. Civil and religious strife, the scaffold of Whitehall and the disastrous Restoration intervened. The results designed by the treaty of Utrecht were necessarily tardy, if not altogether unattained; yet withal, from the acorn planted by Sir William Alexander has grown the wide-spreading, sturdy, oak under whose shadows we now celebrate three hundred years of stirring history. When the time arrived—and, if we consider, the right time rarely *fails* to arrive—Old Scotland contributed the men and the women for whom New Scotland had so long waited, but, as we now know in the light of events, had waited not too long. With them came religious, moral and political ideals which could not have been contributed by the Scottish people of Sir William Alexander's generation, but which were later developed, tried and refined in the super-heated fiery furnace of persecution and counter persecution. In the wonderful, but no longer inscrutable designs of divine providence, prelacy and presbyterianism alike shared in this, for the now apparent purpose of establishing a strong, virtuous, and tolerant populace in this favoured land.